

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JESRO SINGLETARY and U.S. POSTAL SERVICE,  
POST OFFICE, Washington, D.C.

*Docket No. 99-1530; Submitted on the Record;  
Issued August 16, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained a shoulder injury in the performance of duty on June 29, 1998.

On July 2, 1998 appellant, then a 36-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured his shoulder while carrying a heavy load in his satchel. He did not stop work.<sup>1</sup>

In support of his claim, appellant submitted a statement dated November 25, 1998 and medical notes signed by Gloria Rose, a nurse and Ms. White, a nurse.

Appellant filed a recurrence claim for disability commencing November 14, 1998 due to his June 29, 1998 employment injury.

By letter dated January 11, 1999, the Office of Workers' Compensation Programs requested that appellant submit additional information in support of his claim and advised him as to the type of information required to support his claim. The Office also informed appellant that the evidence was insufficient to establish that he sustained a recurrent injury on November 14, 1998.

Appellant responded to the Office's request by submitting information previously submitted which included medical reports signed by a nurse and his responses to the Office's questions.

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<sup>1</sup> N. White, a nurse, in treatment notes dated July 2, 1998 indicated that appellant was not to reach overhead for more than three hours per day and was not to carry mail in a satchel bag until July 6, 1998

By decision dated March 11, 1999, the Office found that appellant had failed to submit sufficient evidence to support his claim that he sustained an injury in the performance of duty on June 29, 1998.

The Board finds that appellant has not met his burden of proof to establish that he sustained a shoulder injury in the performance of duty on June 29, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>8</sup> In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>9</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

<sup>7</sup> *Id.*

<sup>8</sup> *Elaine Pendleton*, *supra* note 3.

<sup>9</sup> *John J. Carlone*, *supra* note 5.

An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.<sup>10</sup> A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.<sup>11</sup> In the instant case, there is no dispute that the carrying incident occurred at the time, place and in the manner alleged, on June 29, 1998.

As to the second component, appellant has failed to submit a rationalized, probative medical opinion from a physician to establish that the employment incident caused a personal injury. The medical treatment notes of Ms. Rose and Ms. White, both nurses, are insufficient to establish appellant's burden because a nurse is not considered a physician within the meaning of the Act and, therefore, their opinion does not constitute competent medical evidence.<sup>12</sup> The Office advised appellant of the deficiency in the evidence, both factual and medical; however, he failed to respond to the Office's request for additional information. Appellant, therefore, failed to meet his burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>13</sup> Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

As there is no medical evidence addressing and explaining why his claimed injury was caused by the alleged June 29, 1998 employment incident, appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty. Thus, the Office's decision is affirmed.

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<sup>10</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>11</sup> *Id.* at 255-56.

<sup>12</sup> *Joseph N. Fassi*, 42 ECAB 677, 679 (1991); *Betty G. Myrick*, 35 ECAB 922, 923 (1984).

<sup>13</sup> *Victor J. Woodhams*, *supra* note 4.

The decision of the Office of Workers' Compensation Programs dated March 11, 1999 is hereby affirmed.

Dated, Washington, D.C.  
August 16, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member